1 BEFORE THE PERSONNEL APPEALS BOARD 2 STATE OF WASHINGTON 3 4 Case No. DEMO-01-0008 5 EDWARD CAVIN, FINDINGS OF FACT, CONCLUSIONS OF 6 Appellant, LAW AND ORDER OF THE BOARD 7 v. 8 DEPARTMENT OF SOCIAL AND HEALTH 9 SERVICES. 10 Respondent. 11 12 I. INTRODUCTION 13 1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER 14 T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at 15 Vancouver Fire Department Station #89 in Vancouver, Washington, on May 3, 2002. René 16 EWING, Member, did not participate in the hearing or in the decision in this matter. 17 18 1.2 **Appearances.** Appellant Edward Cavin was present and was represented by Christopher 19 Coker, Attorney at Law, of Parr and Younglove, P.L.L.C. Paige Dietrich, Assistant Attorney 20 General, represented Respondent Department of Social and Health Services. 22 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a demotion for neglect 23 of duty, gross misconduct and willful violation of agency rules and regulations. Respondent asserts 24 that Appellant made a false entry into the case record of a client about a visit he did not conduct and 25 was untruthful to his supervisor when questioned about the issue. 26 Personnel Appeals Board 1

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Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,

PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

## II. FINDINGS OF FACT

2.1 Appellant Edward Cavin was a Social Worker 2 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 6, 2001.

2.2 By letter dated March 7, 2001, Dee Wilson, Regional Administrator for the Division of

Children and Family Services, informed Appellant of his demotion from his position as a Social

Worker 3 to a position as a Social Worker 2. Mr. Wilson charged Appellant with neglect of duty,

gross misconduct, and willful violation of published employing agency policies. Mr. Wilson

specifically alleged that Appellant made a log entry into the case record for Client C indicating that

he had made a required 90-day health and safety visit to the client's foster home on October 6,

2000, when in fact he had not made the visit. Mr. Wilson also alleged that Appellant was not

honest when he asserted to his supervisor that he made the visit.

2.3 Appellant began his employment with the Vancouver DCFS office in July 1997. As a

Social Worker 3, Appellant was responsible for performing advanced level specialized case

management to children in out-of-home care. Appellant's duties included providing ongoing

services, conducting interviews and home visits to interview clients and foster parents, preparing

| 1  | reports and court documents, working with other agencies and testifying in court on behalf of         |  |  |
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| 2  | children and the department.  |  |  |
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| 4  | 2.4 Appellant's employment history includes a reduction in salary dated December 28, 2000 for         |  |  |
| 5  | neglect of duty, insubordination and willful violation of agency policy for delivering an Individual  |  |  |
| 6  | Service and Safety Plan to the Attorney General's Office that was not approved or signed by his       |  |  |
| 7  | supervisor (PAB Case No. RED-01-0004); a reduction in salary dated October 2, 2000 for neglect        |  |  |
| 8  | of duty and willful violation of agency policy for his failure to report an allegation of child abuse |  |  |
| 9  | within 48 hours; and a letter of reprimand dated November 14, 2000 for violating the department's     |  |  |
| 10 | policy regarding the use of the DSHS electronic messaging system and the Internet.                    |  |  |
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| 12 | 2.5 The Children's Administrative Practices and Procedures Guide, Chapter 4421 (A) Health             |  |  |
| 13 | and Safety of Children, requires that the social worker interview children in out-of-home care. The   |  |  |
| 14 | visits are conducted in person at the out-of-home foster care facility at least once every 90 days.   |  |  |
| 15 | The social workers must document the interview in the client's Service Episode Record (SER)           |  |  |
| 16 | within 30-days of the visit.  |  |  |
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| 18 | 2.6 Client C was placed on Appellant's caseload on May 18, 2000. Client C was living in a             |  |  |
| 19 | foster home, and he conducted a face-to-face visit to the child at the foster home in June 2000.      |  |  |
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| 21 | 2.7 Marion Gilmore, Case Worker Supervisor, was Appellant's supervisor. On November 8,                |  |  |
| 22 | 2000, Ms. Gilmore made a visit to Client C's foster parent. During the visit, Ms. Gilmore and         |  |  |
| 23 | Helen M., the child's foster mother, discussed the services provided by Appellant. Helen indicated    |  |  |
| 24 | that Appellant had not been to the home since June 2000.  |  |  |
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| 1  | 2.8 On November 20, 2000, Ms. Gilmore was reviewing Client C's file before transferring the           |
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| 2  | case to another unit. During her review, Ms. Gilmore noted that the client's SER did not reflect that |
| 3  | Appellant made a 90-day safety and health visit to the foster home. Ms. Gilmore wrote Appellant a     |
| 4  | memo asking if he had conducted the 90-day visit because she could not locate documentation in        |
| 5  | the client's record that such a visit had occurred. Ms. Gilmore informed Appellant the visit needed   |
| 6  | to be completed prior to transferring the case to the other unit. Ms. Gilmore forwarded the memo      |
| 7  | and Client C's case file to Appellant.  |
| 8  |   |
| 9  | 2.9 Appellant testified that he made a 90-day visit to the foster home of Client C in September       |
| 10 | or October. However, after reviewing the exhibits, including Client C's SER, the testimony of Ms.     |
| 11 | Gilmore and the testimony of the foster mother, we do not find his denial credible and we make the    |
| 12 | following findings.   |
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| 14 | 2.10 On November 22 Appellant returned Client C's file to Ms. Gilmore for review. Ms.                 |
| 15 | Gilmore noted that Client C's SER indicated that Appellant had conducted the 90-day health and        |
| 16 | safety visit to the foster home on October 6, 2000. Ms. Gilmore was puzzled with the entry because    |
| 17 | it contradicted the foster mother's statement that Appellant had not visited the home since June      |

Ms. Gilmore subsequently questioned Appellant about the visit, and he assured her that he had visited Client C's foster home, and that his planner confirmed the visit occurred on October 6.

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2.12 Ms. Gilmore initiated a call to the foster parent to discuss the health and safety visit and whether the visit actually occurred. Helen M. confirmed that Appellant had not been to the home since June. The foster mother reviewed her own calendar of activities related to her foster children, which also confirmed that a visit had not occurred.

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client's record.

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may have forgotten." Appellant responded, "October 6." However, the foster mother was sure that a visit had not occurred that date. Appellant also suggested October 16, but the foster mother was out of town beginning October 15 and she was certain Appellant did not visit her home on that date. The foster mother also testified that Appellant did not make a visit to her home in September. However, the foster mother testified that after Client C was placed in her home, she and Appellant

did speak frequently on the telephone to discuss the status of child.

Helen, "don't you remember that I was there?" Helen responded, "I don't. Can you help me out? I

Appellant subsequently telephoned Helen M. During the conversation, Appellant asked

The agency's computer system automatically date stamps the date when an entry is made into a client record and shows that Appellant made a November 22 entry indicating that he had made a safety and health visit on October 6. On November 29, Appellant made an entry that reads, "CORRECTION. The 10-06-00 90 day health and safety visit date is incorrect. The actual date

Client C's SER indicates that Appellant made four entries regarding safety and health visits.

was 9-6-00. The text is correct." Appellant did not inform Ms. Gilmore that he had updated the

conduct for employees. The policy requires that DSHS employees perform their duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith and confidence and requires employees to demonstrate the highest standards of personal integrity,

Respondent has adopted Administrative Policy 6.04 that sets forth the standards for ethical

fairness, honesty, and compliance with laws, rules, regulation and departmental policy.

2.16 Charles Dee Wilson, Regional Administrator, was Appellant's appointing authority. In determining the level of discipline, he considered the administrative findings of the Conduct

Investigation Report that concluded that Appellant engaged in misconduct. After Mr. Wilson 1 2 3 4 5 6 conducted the visit. 7 8 9

reviewed the documents, he considered Appellant's statements that he had conducted the visit. However, after he read the investigative report, he was satisfied that the findings were accurate, that there was no confusion in the dates, and Mr. Wilson was convinced that Appellant did not make the visit. Mr. Wilson was also convinced that Appellant later made a false entry to the SER to indicate the visit had been conducted and that he was dishonest when he told Ms. Gilmore that he had

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2.17 Mr. Wilson testified that health and safety visits are extremely important because they ensure the safety of children in foster care and establish the relationship with the social worker, the child and foster parents. Mr. Wilson also weighed the level of responsibility assigned to Appellant in managing foster care cases and his responsibility to ensure the safety and well being of foster children. Mr. Wilson concluded that Appellant violated the agency's policy that requires social workers to conduct onsite visits every 90 days. Mr. Wilson testified that the agency relies on the accuracy of case records to document case history and that any sort of a falsification of a record is a major violation of agency standards. Mr. Wilson also concluded that Appellant violated Policy 6.04 when he falsely reported that he conducted the visit. Mr. Wilson concluded that Appellant's misconduct constituted gross misconduct because he entered inaccurate information into a case record and then lied about it.

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2.18 When determining the level of sanction, Mr. Wilson also considered other discipline imposed against Appellant, and he felt that the agency had imposed a progressive program of discipline and that the seriousness of these events required a harsher penalty. Mr. Wilson concluded that a demotion was the appropriate sanction.

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## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the credible evidence established that Appellant did not make a 90-day safety and health visit to Client C's home in October or September; that Appellant made a false entry that indicated he made a visit to the client's home on October 6; and that he was dishonest when he told his supervisor that he made the visit. Respondent further argues that after the file was transferred to a new unit, Appellant changed the visit date to September 6th but never came forward to his supervisor or the agency with information that he had modified the date. Respondent concedes that it's probable that the contents of the narrative are accurate, but asserts that the conversation between Appellant and the foster mother did not occur at the foster home, but rather during phone conversations. Respondent argues that the foster mother had no motive to lie, that her memory was fresh at the time she was questioned in November, and if a visit had occurred in either September or October, she would have recalled it. Respondent argues that Appellant neglected his duty when he falsified the visit in the record; that he violated policy by not making the visit; and that he committed gross misconduct when he falsified the client's record.

3.2 Appellant agrees that his record keeping in the C case could have been better, but he denies that he fabricated the entry. Appellant asserts that he went to the foster home but he was not sure of the exact date. He also asserts that he was uncertain of the exact date of the visit because he destroyed the date when he tore his hand written notes from a note pad. Appellant asserts that he made an entry on the SER on November 29 to clarify the date. Appellant argues that Ms. Gilmore insisted he give her a date when he didn't have one and that she tried to get him to make a mistake. Appellant argues that the state has not met its burden that he did not visit the home, and asserts the real issue is that he could not recall the exact date of the visit. Appellant asserts that his appeal

should be granted.

## IV. CONCLUSIONS OF LAW

- 1 2 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter 3 herein. 4 5 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting 6 the charges upon which the action was initiated by proving by a preponderance of the credible 7 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the 8 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of 9 Corrections, PAB No. D82-084 (1983). 10 11 4.3 12
  - Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).
  - 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).
  - 4.5 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).
  - 4.6 Respondent met its burden of proving by a preponderance of the credible evidence that Appellant neglected his duty when he failed to conduct the required 90-day safety and health visit and when he made a false entry to the SER for Client C which indicated that he had conducted the

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| 1 | visit on October 6, a date he had not visited the home. The credible evidence established that   |  |  |  |
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| 2 | Appellant did not conduct a visit to the home in either September or October.  |  |  |  |
| 3 |  |  |  |  |
| 4 | Appellant did not conduct a visit to the home in either September or October.  4.7 As a Social Worker 3, Appellant held a position of trust and was responsible for not only |  |  |  |

y ensuring the safety of children on his caseload, but to conduct his duties in an ethical manner. Not only did Appellant make a false entry to an official agency document, but he was also untruthful to his supervisor when questioned about the entry. His failure to perform his duties in a manner that maintained a high standard of behavior showed a lack of integrity on his part and was a neglect of his duty and violated Administrative Policy 6.04. Furthermore, Appellant's misconduct interfered with the agency's mission to ensure the protection of children in foster homes, compromised the

reliability of client documents and rises to the level of gross misconduct. 11

4.8 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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4.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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4.10 Under the facts and circumstances of this case, we cannot conclude that a demotion to a Social Worker 2 position is too severe. Therefore, the appeal of Edward Cavin should be denied.

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|----|---|----------------------------------|-----------|--|--|--|
| 2  | V. ORDER  |                                  |           |  |  |  |
| 3  | NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Edward Cavin is denied. |                                  |           |  |  |  |
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| 5  | DATED this  | day of                           | , 2002.   |  |  |  |
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